



Plaintiffs have not filed a motion to disqualify defendants' counsel, as plaintiffs' counsel has stated that given the current state of the record, the potential conflict is merely that -- a potential. Counsel for defendants Georgetown and Watson stated at the status conference that she sees no conflict of interest because, under the doctrine of *respondeat superior*, Georgetown ultimately will be liable for any damages assessed against Dr. Watson on any theory, including presumably punitive damages.

The Court ruled at the status conference that counsel for defendants Georgetown and Dr. Watson must engage an independent lawyer to separately advise Dr. Watson as to whether or not there is any sort of a conflict of interest in view of the claims in this case and his testimony at the deposition. If there is any real, apparent or potential conflict, that lawyer must advise Dr. Watson of his right either to waive for all purposes -- pretrial and trial -- any possible conflict of interest or to assert the conflict and obtain separate counsel. The Court also ruled at the status conference that Ms. Zimmet is entitled to separate and independent counsel for purposes of her deposition. Indeed, as plaintiffs' counsel has suggested, it would be wise to depose Ms. Zimmet before seeking the advice of an independent lawyer for Dr. Watson on the issue of a potential conflict, inasmuch as the conflict analysis and the independent lawyer's advice may differ based on what Ms. Zimmet says at her deposition. Once Dr. Watson has obtained an independent lawyer on this matter, defendants' counsel will notify the Court who that person is. Once Dr. Watson has obtained that lawyer's advice, he or she will submit a report to this Court setting forth his or her independent analysis of whether there is or may be a conflict. The report should include an affidavit from Dr. Watson stating whether he wishes to waive any

such conflict. The Court then will determine whether an evidentiary hearing is required on this issue.

Counsel for defendants asserted at the status conference that she could not conduct or respond to any further discovery while this matter is pending, and further asserted that she believes that the allegation of a conflict prevents her from advising either of her clients in the meantime. Defendants' counsel also stated that she believed discovery had been stayed by Magistrate Judge Kay in the June 12, 2007 telephonic conference in view of the potential conflict issue that she had raised to the Court in her June 5, 2007 letter. Plaintiffs' counsel disputed defendants' counsel's characterization of the telephonic conference or that a stay on discovery was put in place. Magistrate Judge Kay has confirmed to this Court that no such stay was entered, and that discovery continues to go forward, as was evidenced by his June 26, 2007 Memorandum Order on the defendants' pending motion for a protective order.

The Court sees no reason why the deposition of Ms. Zimmet cannot go forward given the posture of the issue and the necessity of obtaining her testimony prior to evaluating the potential conflict that has been raised. According to defendant's counsel, obtaining independent counsel and preparing Ms. Zimmet for her deposition will take approximately two weeks. Plaintiffs' counsel also informed the Court at the status conference that they are anxious to take the depositions of Ms. Zimmet, Dr. Kenneth Bloem, Dr. Leonard Chiazze, and Paul Katz, and to complete Dr. Watson's deposition as soon as possible. This Court is prepared to expedite the depositions of Dr. Watson and Ms. Zimmet. Magistrate Judge Kay has set forth in his Memorandum Order of June 26, 2007 a methodology for dealing with plaintiffs' other deposition requests. Accordingly, it is hereby

